

2001 Senate Bill 375

Date of enactment: **April 10, 2002**  
Date of publication\*: **April 23, 2002**

## 2001 WISCONSIN ACT 65

AN ACT *to repeal* 628.097 (1) (title) and 628.097 (2); *to renumber* 601.41 (3), 628.097 (1) (a) and 628.097 (1) (b); *to renumber and amend* 628.46 (2m); *to amend* 227.21 (2) (a), 227.21 (2) (b), 600.03 (19) (b) 1., 612.33 (2) (a), 612.33 (2) (b), 618.43 (7), 628.09 (1), 628.09 (4), 628.09 (5), 628.097 (title), 632.05 (2), 632.68 (2) (e), 632.68 (4) (c), 632.835 (2) (b), 655.27 (5) (a) 1., 655.27 (5) (a) 2. and 655.455; and *to create* 601.41 (3) (b), 604.04 (8), 618.39 (3), 628.46 (2m) (b) and 632.835 (2) (bg) of the statutes; **relating to:** miscellaneous changes to the insurance laws related to the confidentiality of personal information obtained in the course of administering a state insurance fund, the statute of limitations for bringing an action against the patients compensation fund and providing notice of mediation to that fund, the applicability of a timeliness requirement for the payment of insurance claims for chiropractic services, an exception from a requirement to obtain consent to incorporate certain publications by reference in administrative rules, the type of property for which the loss amount is the insurance limits, the renewal date for viatical settlement brokers' licenses, eliminating the requirement to keep a separate account for surplus lines taxes, issuance of temporary licenses for intermediaries, specifying by rule the amount of stop-loss reinsurance that a town mutual must obtain, standards related to assisting unauthorized insurers, providing notice of the right to independent review, and defining extraordinary dividends for life insurers; and granting rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 227.21 (2) (a) of the statutes is amended to read:

227.21 (2) (a) ~~To~~ Except as provided in s. 601.41 (3) (b), to avoid unnecessary expense, an agency may, with the consent of the revisor and the attorney general, adopt standards established by technical societies and organizations of recognized national standing by incorporating the standards in its rules by reference to the specific issue or issues of the publication in which they appear, without reproducing the standards in full.

**SECTION 2.** 227.21 (2) (b) of the statutes is amended to read:

227.21 (2) (b) The revisor and the attorney general shall consent to incorporation by reference only in a rule of limited public interest and in a case where the incorporated standards are readily available in published form. Each rule containing an incorporation by reference shall state how the material incorporated may be obtained and, except as provided in s. 601.41 (3) (b), that the standards are on file at the offices of the agency, the secretary of state, and the revisor.

**SECTION 3.** 600.03 (19) (b) 1. of the statutes is amended to read:

600.03 (19) (b) 1. With respect to a life insurer, the total net ~~gain from operations~~ income of the insurer for the calendar year preceding the date of the dividend or distribution, minus realized capital gains for that calendar year.

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\* Section 991.11, WISCONSIN STATUTES 1999-00 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

**SECTION 4.** 601.41 (3) of the statutes is renumbered 601.41 (3) (a).

**SECTION 5.** 601.41 (3) (b) of the statutes is created to read:

601.41 (3) (b) The commissioner may, without the consent of the revisor or the attorney general as required under s. 227.21 (2), adopt standards of the National Association of Insurance Commissioners by incorporating by reference in rules promulgated by the commissioner any materials published, adopted, or approved by the National Association of Insurance Commissioners, without reproducing the standards in full. The standards referred to in this paragraph do not include any model act or model regulation proposed or adopted by the National Association of Insurance Commissioners. Any materials of the National Association of Insurance Commissioners that are incorporated by reference in rules promulgated by the commissioner shall be obtainable from, and are only required to be kept on file at, the office, which shall be stated in any rule containing such an incorporation by reference. Nothing in this paragraph prohibits the commissioner from adopting standards of the National Association of Insurance Commissioners through incorporation by reference in rules in the manner provided under s. 227.21 (2).

**SECTION 6.** 604.04 (8) of the statutes is created to read:

604.04 (8) NONDISCLOSURE OF PERSONAL INFORMATION. The manager may refuse to disclose, and may prevent any other person from disclosing, any personally identifiable information, as defined in s. 19.62 (5), that is obtained by the manager in the course of administering a fund under chs. 605 to 607.

**SECTION 7.** 612.33 (2) (a) of the statutes is amended to read:

612.33 (2) (a) *Windstorm and hail insurance.* If a town mutual provides coverage against windstorm or hail, or other perils involving a similar potential for catastrophic losses, which are designated by the commissioner by rule, it shall obtain reinsurance for each such risk or else stop-loss reinsurance with an insurer authorized to do such business in this state, to an extent ~~reasonably adequate to cover the risk of catastrophic losses or in an amount specified by the commissioner by rule.~~ The commissioner may prescribe detailed requirements for such reinsurance by rule or by order.

**SECTION 8.** 612.33 (2) (b) of the statutes is amended to read:

612.33 (2) (b) *Nonproperty insurance.* To the extent that a town mutual provides insurance under s. 612.31 (3), it shall obtain reinsurance of at least a 90% proportional share of each risk with an insurer authorized to do such business in this state. The commissioner may permit a town mutual to retain a larger percentage if he or she finds that the interests of the members will not be endangered thereby, or may require it to reinsure a larger per-

centage if he or she finds that the interests of the members make it advisable. The commissioner may by rule require other reinsurance.

**SECTION 9.** 618.39 (3) of the statutes is created to read:

618.39 (3) STANDARDS BY RULE. (a) The office may by rule promulgate standards for any of the following:

1. Establishing that a person should know that the result of insurance business is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer.

2. Imposing requirements under s. 601.42 or 628.04 or sanctions or remedial measures under sub. (2) or s. 601.64, or any other applicable penalty or remedial provision of chs. 600 to 646, for a violation of this section.

(b) Notwithstanding par. (a) 1., it is not necessary for the office to promulgate a rule under par. (a) 1. to establish that a person violated sub. (1).

**SECTION 10.** 618.43 (7) of the statutes is amended to read:

618.43 (7) TAXES AS TRUST FUNDS. All premium taxes collected under this section by an agent or broker or by an insurer are the property of this state. ~~They shall be kept in a separate account and may not be commingled with funds belonging to anyone else, to be held in trust for the state.~~

**SECTION 11.** 628.09 (1) of the statutes is amended to read:

628.09 (1) ISSUANCE OF LICENSE. Except as provided in s. 628.095 or 628.097, the commissioner may issue a temporary license as an intermediary for a period of not more than 3 1/2 months to the personal representative of a deceased or mentally disabled intermediary, or to a person designated by an intermediary who is otherwise disabled or has entered active duty in the U.S. armed forces, in order to give time for more favorable sale of the goodwill of a business owned by the intermediary, for the recovery or return of the intermediary, or for the orderly training and licensing of new personnel for the intermediary's business. ~~This subsection does not apply to life insurance agents.~~

**SECTION 12.** 628.09 (4) of the statutes is amended to read:

628.09 (4) DURATION OF LICENSE. The commissioner may by order revoke a temporary license if the interests of insureds or the public are endangered. ~~Except as provided in s. 628.097, a~~ A temporary license may not be extended beyond the initial period specified under sub. (1), ~~for additional periods of not more than 3 months each, with the total period not to exceed 12 months in the aggregate.~~ A temporary license may not continue after the owner or the personal representative disposes of the business.

**SECTION 13.** 628.09 (5) of the statutes is amended to read:

628.09 (5) FEES. The fees for a temporary license are the same as for a permanent license. ~~No additional fee may be charged for extensions under sub. (4), nor for the issuance of a subsequent license under s. 628.04 if that license is issued while the temporary license remains in effect.~~

**SECTION 14.** 628.097 (title) of the statutes is amended to read:

**628.097** (title) **Refusal to issue license; failure to pay support or to comply with subpoena or warrant; tax delinquency.**

**SECTION 15.** 628.097 (1) (title) of the statutes is repealed.

**SECTION 16.** 628.097 (1) (a) of the statutes is renumbered 628.097 (1m).

**SECTION 17.** 628.097 (1) (b) of the statutes is renumbered 628.097 (2m).

**SECTION 18.** 628.097 (2) of the statutes is repealed.

**SECTION 19.** 628.46 (2m) of the statutes, as created by 2001 Wisconsin Act 16, is renumbered 628.46 (2m) (a) and amended to read:

628.46 (2m) (a) Notwithstanding subs. (1) and (2) ~~and except as provided in par. (b)~~, a claim for payment for chiropractic services is overdue if not paid within 30 days after the insurer receives clinical documentation from the chiropractor that the services were provided unless, within those 30 days, the insurer provides to the insured and to the chiropractor the written statement under s. 632.875 (2).

**SECTION 20.** 628.46 (2m) (b) of the statutes is created to read:

628.46 (2m) (b) Paragraph (a) does not apply to any of the following:

1. Worker's compensation insurance.
2. Any line of property and casualty insurance except disability insurance. In this subdivision, "disability insurance" does not include uninsured motorist coverage, underinsured motorist coverage, or medical payment coverage.

**SECTION 21.** 632.05 (2) of the statutes is amended to read:

632.05 (2) Whenever any policy insures real property ~~which that~~ is owned and occupied by the insured primarily as a dwelling and the property is wholly destroyed, without criminal fault on the part of the insured or the insured's assigns, the amount of the loss shall be taken conclusively to be the policy limits of the policy insuring the property.

**SECTION 22.** 632.68 (2) (e) of the statutes is amended to read:

632.68 (2) (e) Except as provided in sub. (3), a license issued under this subsection shall be renewed annually on ~~the anniversary date July 1~~ upon payment of the fee specified in s. 601.31 (1) (mp) and upon providing the licensee's social security number, unless the licensee does not have a social security number, or federal employer identi-

fication number, as applicable, if not previously provided on the application for the license or at a previous renewal of the license. If the licensee is a natural person who does not have a social security number, the license shall be renewed annually on ~~the anniversary date July 1~~ upon payment of the fee specified in s. 601.31 (1) (mp) and upon providing to the commissioner a statement made or subscribed under oath or affirmation, on a form prescribed by the department of workforce development, that the licensee does not have a social security number.

**SECTION 23.** 632.68 (4) (c) of the statutes is amended to read:

632.68 (4) (c) Except as provided in sub. (5), a license issued under this subsection shall be renewed annually on ~~the anniversary date July 1~~ upon payment of the fee specified in s. 601.31 (1) (ms) and upon providing the licensee's social security number, unless the licensee does not have a social security number, or federal employer identification number, as applicable, if not previously provided on the application for the license or at a previous renewal of the license. If the licensee is a natural person who does not have a social security number, the license shall be renewed annually, except as provided in sub. (5), on ~~the anniversary date July 1~~ upon payment of the fee specified in s. 601.31 (1) (ms) and upon providing to the commissioner a statement made or subscribed under oath or affirmation, on a form prescribed by the department of workforce development, that the licensee does not have a social security number.

**SECTION 23c.** 632.835 (2) (b) of the statutes, as created by 1999 Wisconsin Act 155, is amended to read:

632.835 (2) (b) ~~Whenever~~ If an adverse determination or an experimental treatment determination is made, the insurer involved in the determination shall provide notice to the insured of the insured's right to obtain the independent review required under this section, how to request the review, and the time within which the review must be requested. The notice shall include a current listing of independent review organizations certified under sub. (4). An independent review under this section may be conducted only by an independent review organization certified under sub. (4) and selected by the insured.

**SECTION 23d.** 632.835 (2) (bg) of the statutes is created to read:

632.835 (2) (bg) Notwithstanding par. (b), an insurer is not required to provide the notice under par. (b) to an insured until the insurer sends notice of the disposition of the internal grievance if all of the following apply:

1. The health benefit plan issued by the insurer contains a description of the independent review procedure under this section, including an explanation of the insured's rights under par. (d), how to request the review, the time within which the review must be requested, and how to obtain a current listing of independent review organizations certified under sub. (4).

2. The insurer includes on its explanation of benefits form a statement that the insured may have a right to an independent review after the internal grievance process and that an insured may be entitled to expedited independent review with respect to an urgent matter. The statement shall also include a reference to the section of the policy or certificate that contains the description of the independent review procedure as required under subd. 1. The statement shall provide a toll-free telephone number and website, if appropriate, where consumers may obtain additional information regarding internal grievance and independent review processes.

3. For any adverse determination or experimental treatment determination for which an explanation of benefits is not provided to the insured, the insurer provides a notice that the insured may have a right to an independent review after the internal grievance process and that an insured may be entitled to expedited, independent review with respect to an urgent matter. The notice shall also include a reference to the section of the policy or certificate that contains the description of the independent review procedure as required under subd. 1. The notice shall provide a toll-free telephone number and website, if appropriate, where consumers may obtain additional information regarding internal grievance and independent review processes.

**SECTION 24.** 655.27 (5) (a) 1. of the statutes is amended to read:

655.27 (5) (a) 1. Any person may file a claim for damages arising out of the rendering of medical care or services or participation in peer review activities under s. 146.37 within this state against a health care provider or an employee of a health care provider. A person filing a claim may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund and, the fund is named as a party in the action, and the action against the fund is commenced within the same time limitation within which the action against the health care provider or employee of the health care provider must be commenced.

**SECTION 25.** 655.27 (5) (a) 2. of the statutes is amended to read:

655.27 (5) (a) 2. Any person may file an action for damages arising out of the rendering of medical care or services or participation in peer review activities under s. 146.37 outside this state against a health care provider or an employee of a health care provider. A person filing an action may recover from the fund only if the health care provider or the employee of the health care provider has

coverage under the fund and, the fund is named as a party in the action, and the action against the fund is commenced within the same time limitation within which the action against the health care provider or employee of the health care provider must be commenced. If the rules of procedure of the jurisdiction in which the action is brought do not permit naming the fund as a party, the person filing the action may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund and the fund is notified of the action within 60 days of service of process on the health care provider or the employee of the health care provider. The board of governors may extend this time limit if it finds that enforcement of the time limit would be prejudicial to the purposes of the fund and would benefit neither insureds nor claimants.

**SECTION 25m.** 655.455 of the statutes is amended to read:

**655.455 Notice to health care providers and fund.**

The director of state courts shall serve notice of a request for mediation upon all health care providers named in the request, at the respective addresses provided in the request, and upon the fund, by registered mail within 7 days after the director of state courts receives the request if delivered in person or within 10 days after the date of mailing of the request to the director of state courts if sent by registered mail.

**SECTION 26. Initial applicability.**

(1) RENEWAL OF VIATICAL SETTLEMENT PROVIDER AND BROKER LICENSES. The treatment of section 632.68 (2) (e) and (4) (c) of the statutes first applies to licenses renewed in 2002.

(2) ISSUANCE OF TEMPORARY INTERMEDIARY LICENSES. The treatment of sections 628.09 (1), (4), and (5) and 628.097 (title), (1) (title), (a), and (b), and (2) of the statutes first applies to temporary licenses issued on the effective date of this subsection.

(3) PATIENTS COMPENSATION FUND STATUTE OF LIMITATIONS. The treatment of section 655.27 (5) (a) 1. and 2. of the statutes first applies to claims arising out of injuries occurring on the effective date of this subsection.

**SECTION 26m. Effective dates.** This act takes effect on the day after publication, except as follows:

(1x) NOTICE OF INDEPENDENT REVIEW. The treatment of section 632.835 (2) (b) and (bg) of the statutes takes effect on the date stated in the notice published by the commissioner of insurance in the Wisconsin Administrative Register under section 632.835 (8) of the statutes.